

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**CHRISTOPHER PAUL SCHWERMER,
RESPONDENT**

vs.

**AMANDA LYNN SCHWERMER,
APPELLANT**

DOCKET NUMBER WD73685

DATE: OCTOBER 4, 2011

Appeal from:

The Circuit Court of Pettis County, Missouri
The Honorable Hugh C. Harvey, Judge

Appellate Judges:

Division Three: Victor C. Howard, P.J., Alok Ahuja and Karen King Mitchell, JJ.

Attorneys:

Tina M. Luper, for Respondent

John H. Edmiston, for Appellant

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

CHRISTOPHER PAUL SCHWERMER, RESPONDENT

v.

AMANDA LYNN SCHWERMER, APPELLANT

WD73685

Pettis County, Missouri

Before Division Three: Victor C. Howard, P.J., Alok Ahuja and Karen King Mitchell, JJ.

Father filed a motion to modify child custody, alleging that a substantial and continuing change in circumstances necessitated a modification of child custody. Mother was personally served with the summons and the motion at her residence in Minnesota. However, she did not file a responsive pleading to Father's motion. Father filed a notice of hearing with the court but did not send the notice to Mother. Father presented his motion to the court. The court found that Mother was in default and awarded sole legal and physical custody of the child to Father. Mother filed a motion for relief from the judgment, alleging that she was not in default because she was not required to file an answer to Father's motion. Mother argued that she was entitled to notice of the hearing. The trial court denied Mother's motion. Mother appeals.

REVERSED AND REMANDED.

Division Three holds:

Where no rule or statute requires the filing of a formal answer or other responsive pleading to a motion to modify, Mother was not required to file an answer to Father's motion. Where Mother was not in default for failure to file a responsive pleading, she was entitled to notice of the time of the hearing on Father's motion. The trial court's judgment transferring custody is void and the trial court abused its discretion in denying Mother's motion for relief from the judgment. The judgment of the trial court is reversed, and the case is remanded for a new hearing on Father's motion to modify, with notice provided to Mother as to the time, date, and location of the hearing.

Opinion by: Victor C. Howard, Judge

Date: October 4, 2011

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